

§ 4.206

trust property have died intestate without heirs and—

(a) With respect to trust property other than on the public domain, shall order the escheat of such property in accordance with 25 U.S.C. 373a.

(b) With respect to trust property on the public domain, shall submit to the Board of Indian Appeals the records thereon, together with their recommendations as to the disposition of said property under 25 U.S.C. 373b.

[36 FR 7186, Apr. 15, 1971, as amended at 55 FR 43132, Oct. 26, 1990]

§ 4.206 Determinations of nationality or citizenship and status affecting character of land titles.

In cases where the right and duty of the Government to hold property in trust depends thereon, administrative law judges shall determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of U.S. citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated (a) in current probate proceedings or (b) in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242.

§ 4.207 Compromise settlement.

(a) If during the course of the probate of an estate it shall develop that an issue between contending parties is of such nature as to be substantial, and it further appears that such issue may be settled by agreement preferably in writing by the parties in interest to their advantage and to the advantage of the United States, such an agreement may be approved by the administrative law judge upon findings that:

(1) All parties to the compromise are fully advised as to all material facts;

(2) All parties to the compromise are fully cognizant of the effect of the compromise upon their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

(b) In considering the proposed settlement, the administrative law judge may take and receive evidence as to the respective values of specific items of property. Superintendents and irri-

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gation project engineers shall supply all necessary information concerning any liability or lien for payment of irrigation construction and of irrigation operation and maintenance charges.

(c) Upon an affirmative determination as to all three points specified, the administrative law judge shall issue such final order of distribution in the settlement of the estate as is necessary to approve the same and to accomplish the purpose and spirit of the settlement. Such order shall be construed as any other order of distribution establishing title in heirs and devisees and shall not be construed as a partition or sale transaction within the provisions of 25 CFR part 152. If land titles are to be transferred, the necessary deeds shall be prepared and executed at the earliest possible date. Upon failure or refusal of any party in interest to execute and deliver any deed necessary to accomplish the settlement, the administrative law judge shall settle the issues and enter his order as if no agreement had been attempted.

(d) Administrative law judges are authorized to approve all deeds or conveyances necessary to accomplish a settlement under this section.

[36 FR 7186, Apr. 15, 1971, as amended at 55 FR 43132, Oct. 26, 1990]

§ 4.208 Renunciation of interest.

Any person 21 years or older, whether of Indian descent or not, may renounce intestate succession or devise of trust or restricted property, wholly or partially (including the retention of a life estate), by filing a signed and acknowledged declaration of such renunciation with the administrative law judge prior to entry of the administrative law judge's final order. No interest in the property so renounced is considered to have vested in the heir or devisee and the renunciation is not considered a transfer by gift of the property renounced, but the property so renounced passes as if the person renouncing the interest has predeceased the decedent. A renunciation filed in accordance herewith shall be considered accepted when implemented in an order by an administrative law judge and shall be irrevocable thereafter. All disclaimers or renunciations heretofore filed with

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and implemented in an order by an administrative law judge are hereby ratified as valid and effective.

[51 FR 35220, Oct. 2, 1986]

COMMENCEMENT OF PROBATE PROCEEDINGS

§ 4.210 Commencement of probate.

The probate of a trust estate before an administrative law judge will commence when the probate specialist or BIA deciding official files with the administrative law judge all information shown in the records relative to the family of the deceased and his or her property. The information must include the complete probate package described in 25 CFR 15.202 and any other relevant information. The agency or BIA deciding official must promptly transmit to the administrative law judge any creditor's or other claims that are received after the case is transmitted to the administrative law judge, for a determination of their timeliness, validity, priority, and allowance under §§ 4.250 and 4.251.

[66 FR 32889, June 18, 2001]

§ 4.211 Notice.

(a) An administrative law judge may receive and hear proofs at a hearing to determine the heirs of a deceased Indian or probate his will only after he has caused notice of the time and place of the hearing to be posted at least 20 days in five or more conspicuous places in the vicinity of the designated place of hearing, and he may cause postings in such other places and reservations as he deems appropriate. A certificate showing the date and place of posting shall be signed by the person or official who performs the act.

(b) The administrative law judge shall serve or cause to be served a copy of the notice on each party in interest reported to the administrative law judge and on each attesting witness if a will is offered:

(1) By personal service in sufficient time in advance of the date of the hearing to enable the person served to attend the hearing; or

(2) By mail, addressed to the person at his last known address, in sufficient time in advance of the date of the hear-

ing to enable the addressee served to attend the hearing. The administrative law judge shall cause a certificate, as to the date and manner of such mailing, to be made on the record copy of the notice.

(c) All parties in interest, known and unknown, including creditors, shall be bound by the decision based on such hearing if they lived within the vicinity of any place of posting during the posting period, whether they had actual notice of the hearing or not. As to those not within the vicinity of the place of posting, a rebuttable presumption of actual notice shall arise upon the mailing of such notice at a reasonable time prior to the hearing, unless the said notice is returned by the postal service to the administrative law judge's office unclaimed by the addressee.

(d) *Tribes to be charged with notice of death and probate.* When a record reveals that a Tribe has a statutory option to purchase interests of a decedent, such Tribe shall be notified of the pendency of a proceeding by the judge having probate jurisdiction in such proceeding, and the judge's certificate of mailing of notice of probate hearing or of a final decision in probate to the Tribe at its record address shall be conclusive evidence for all purposes that the Tribe had notice of decedent's death and notice of the pendency of the probate proceedings.

[36 FR 7186, Apr. 15, 1971, as amended at 39 FR 31636, Aug. 30, 1974]

§ 4.212 Contents of notice.

(a) In the notice of hearing, the administrative law judge shall specify that at the stated time and place he will take testimony to determine the heirs of the deceased person (naming him) and, if a will is offered for probate, testimony as to the validity of the will describing it by date. The notice shall name all known presumptive heirs of the decedent, and, if a will is offered for probate, the beneficiaries under such will and the attesting witnesses to the will. The notice shall cite this subpart as the authority and jurisdiction for holding the hearing, and